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Ch. D. 168. See BRANDT, SURETYSHIP, § 268. The reasons underlying this view seem to be those of practical fairness. The contrary doctrine would facilitate secret and fraudulent dealings between the principal and a favored surety, and would therefore tend to prevent the strict maintenance of the fiduciary relation in which the law places co-sureties *inter se*. See *Agnew* v. *Bell*, 4 Watts (Pa.) 31. It would also enable a creditor hostile to the unsecured sureties to sue them alone, leaving them to bear the burden of the obligation without having the benefit of the security. See *Lansdale's Adm'rs* v. *Cox*, 7 T. B. Mon. (Ky.) 401, 403. The same considerations seem applicable to that class of cases to which the principal case belongs, namely, that in which the security is given contemporaneously with the creation of the suretyship. Accordingly the weight of authority holds, in opposition to the principal case, that here, too, the security must be held for the benefit of all the sureties. *Agnew* v. *Bell*, *supra*; *Steel* v. *Dixon*, 17 Ch. D. 825. The North Carolina court, however, distinguishes the two classes of cases on the ground that a security given at the time of contracting the suretyship forms a part of the consideration of the contract of which the surety should not be deprived. It is submitted, however, that the security should nevertheless be brought into hotchpot, both for reasons suggested above and because the application of the same rule to both classes leaves the law in a more uniform state.

Cases of a third class arise when partial security or indemnity is given by the principal to one of several co-sureties after payment of the principal debt by one or more of such sureties. Here the courts hold that the surety receiving such indemnity may hold it free from the claims of his co-sureties, and that, consequently, his right to contribution from them is in no way affected by the transaction. *Gould* v. *Fuller*, 18 Me. 364; *cf. Harrison* v. *Phillips*, 46 Mo. 520; *Messer* v. *Swan*, 4 N. H. 481. In support of this view it may be argued that, since the creditor has been paid, he can no longer discriminate unfairly among the sureties; that the payment by the sureties has for the first time definitely fixed the amount of their claims as against each other, and that therefore the courts, in order to wind up the suretyship relation as soon as possible, insist upon a final settlement as of the time of the accrual of these definite claims. This course has the further advantage of securing to the diligent surety the full benefit of the indemnity which he has obtained. It would seem, however, that to some extent at least, these arguments may be answered. It is true that the creditor is no longer able to inflict the loss at his caprice on the unsecured sureties, but this power has merely been transferred to an equally capricious principal who, in many cases, is insolvent. The opportunities for fraud between the principal and a favored surety remain, and the rule destroys the uniformity otherwise running through the cases. It is probably the advantage of an immediate final settlement which has led the courts to adopt this rule. If accepted, however, it should be with the qualification that the partially indemnified surety be not allowed to recover from his co-sureties a sum which, added to the indemnity already paid him by the principal, exceeds the amount which he originally paid to the creditor.

TAXATION OF PROPERTY LYING OUTSIDE THE TAXING DISTRICT. — An interesting point regarding the limits of a state's right to delegate powers of taxation is involved in the facts of a case lately before the Supreme Court

of the United States. The plaintiff floated logs down a Michigan river to a point where, during the winter, they were to lie awaiting shipment into an adjoining state in the spring. A Michigan statute provided that forest produce "in transit to some place without the state" should be "assessed at the place in this state nearest to the last boom" through which it was to pass. The plaintiff's logs were assessed under this statute while awaiting shipment, although they lay outside the limits of the village making the assessment. Action was brought to restrain the collection of the tax, on the ground that it infringed the power of Congress to regulate interstate commerce, but the court held that since the logs had not started on their final journey into the adjoining state, they had not yet become subjects of interstate commerce. *Diamond Match Co.* v. *Village of Ontonagon*, 23 Sup. Ct. Rep. 266.

The decision is clearly in accordance with the established law regarding interstate commerce. *Coe* v. *Errol*, 116 U. S. 517. It would seem, however, that the tax might have been disputed as unconstitutional because levied upon property lying outside the limits of the village which taxed it. In some instances, it is true, such taxes have been upheld upon the ground that the state, having the right to tax all property within its boundaries, may delegate this right to any of its taxing agencies, irrespective of the actual *situs* of the particular property taxed. *Conwell* v. *Connersville*, 8 Ind. 358; *Langhorne* v. *Robinson*, 20 Gratt. (Va.) 661. It is submitted, however, that this view overlooks certain of the principles underlying taxation. The obligation to contribute to the support of government seems to be founded on the protection guaranteed by the sovereign to the rights of the taxpayer. See COOLEY, TAXATION, 2 ed., 19, 20. To some extent at least, the same principle seems applicable as between local taxing districts, even though they derive their powers from the same sovereign. To tax property for the maintenance of a local government not that of its actual *situs*, at a rate perhaps higher than that of the *situs*, seems an arbitrary imposition without due return. Accordingly the majority of cases, for varying reasons, pronounce such a tax unconstitutional. Some hold it to be taking private property "for public use without just compensation"; others consider that it violates the requirement of uniformity existing in many state constitutions. *Wells* v. *Weston*, 22 Mo. 384; *People* v. *Daniels*, 6 Utah, 288; *People* v. *Townsend*, 56 Cal. 633. *Cf.* Const. Mich. Art. xviii, § 14; Art. xiv, § 11. It would seem also arguable that such taxes are a taking of property without due process of law. See JUDSON, TAXATION, § 340. Further, it is not possible to support the tax under the circumstances of the principal case as one upon goods in transit, since for purposes of taxation the goods seem properly regarded as fully incorporated into the general mass of property at the *situs*. See *Coe* v. *Errol*, *supra*, 529; *cf. Hays* v. *Steamship Co.*, 17 How. (U. S. Sup. Ct.) 596. But even had the property been in actual transit to the defendant village, such a tax seems questionable. The principles suggested above would render it incompetent for a legislature to authorize taxation in a district which the property never has entered in the past and may never enter in the future. It is submitted that the proper place of taxation in such a case is that in which the goods were last a part of the general mass of property. This rule seems supported by the analogy of taxes upon residents. Such taxes may be levied until a change of domicile has been actually accomplished; that is, until arrival at the new domicile. *McCutchen* v. *Rice County*, 7 Fed. Rep. 558.